# New Hampshire Department of Revenue Administration

# Fiscal Note Quick Guide

15-0904

**SB 217-FN-A**, *establishing a job creation tax credit against the business enterprise tax.*

Senate Ways & Means Committee

This bill provides for a Small Business Job Creation Tax Credit against the Business Enterprise Tax (BET) and has the "cascading effect" of reducing the Business Profits Tax (BPT) only for "new business" that hire a "net new job." The bill defines a "net new job" as a new, fulltime, year-round employee who was unemployed after July 1, 2015. For each "net new job" hired, the business shall be allowed a tax credit in the amount of either $750 or $1,000 depending upon the percentage the employee's wage is greater than current state minimum wage. This bill does not provide a limit on the number of tax credits that can be issued.

The Department of Revenue Administration (DRA) cannot estimate the potential reduction of revenue because there is no limit on the number of tax credits that can be issued and because the DRA cannot predict how many businesses "not operating or located within the state at the time it submits its application to participate in the program" would take advantage of this program and move into New Hampshire to conduct business activities.

This proposed credit would have a cascading effect, wherein the credit used to offset any BET liability would be considered "taxes paid under RSA 77-E" and, thus, the exact same credit would, in effect, be used to offset any BPT liability as well. For example, if one $1,000 credit was used against at least $1,000 in BET and $1,000 in BPT as well, the net effect would be the usage of $2,000 in credit. As such, each proposed $1,000 credit granted could cost the State of New Hampshire $2,000 in business tax revenues. Therefore, should 100 credits be granted, that could cost the State $200,000. 500 credits could cost the State $1,000,000 and 1000 credits could cost the State $2,000,000.

It is unclear from the language of the bill how the Department of Resources and Economic Development (DRED) would verify that a "net new job" was not "shifted to a new position because of a merger, acquisition or restructuring." This could be an issue for DRED, as well as an audit issue for the DRA.

Under this bill, the administrative responsibility of approving and certifying all the applications for the credit would be with DRED. This law could be administered by the DRA without any additional cost.

In Section 2, page 2 of the bill (Lines 14 and 15), pertaining to new RSA 77-E:3-e,II, "unused, carried forward credit under this section shall be applied before any other available carry-forward credit." The DRA notes this new section conflicts with existing RSA 77-E:3-c,III, relative to the Coos County Job Creation Tax Credit. The Coos County Job Creation Tax Credit has the same language- “Unused, carried forward credit under this section shall be applied before any other available carry-forward credit.” They cannot both be first applied credits.

The DRA notes that the bill appears to classify taxpayers as opposed to classifying property received; legal precedent indicates that a constitutional challenge could be made. “Distinctions in tax treatment must rest upon reasonable classifications of property, not upon classifications of taxpayers owning a common class of property.” Opinion of Justices, 132 N.H. 777 (1990) citing Opinion of Justices, 115 N.H. 306 (1975).

The DRA also notes that the State minimum wage is $7.25 per hour. 200% of that would be a wage of $14.50 per hour. A job for 52 weeks at 37.5 hours per week would pay $28,275. The BET tax on those wages would be $212.06. This bill would give the employer a credit worth $1,000 against BET and it could then be used to also cover $1,000 in BPT liability.